

Appl. No. 10/006,780
Amdt. dated September 19, 2003
Reply to Office Action of August 19, 2003

PATENT

REMARKS/ARGUMENTS

I. Status of the Claims

Claims 1-18 are currently pending. Upon entry of this amendment, claims 8-10, 15 and 17 are amended and claims 1-7 and 16 canceled without prejudice or disclaimer. Claims 1-7 and 16 are canceled simply because they are directed to non-elected subject matter. The amended claims are amended solely to address typographical errors and other formal matters. These amendments do not narrow the scope of the original claims, and the amended claims are entitled to the same scope of equivalents as the original claims. Applicants reserve the right to reintroduce the unamended or canceled claims in this or another application. Claims 8-15 and 17-18 are thus pending following entry of this amendment.

II. Response to Restriction Requirement

In response to the Restriction Requirement mailed August 19, 2003, Applicants provisionally elect with traverse to prosecute the claims in Group II, which include claims 8-15. Applicants are also required to elect a single sequence from SEQ ID NOs: 2, 4, 6, 8 and 10. The Office Action states that this is an actual restriction requirement rather than simply a species election requirement. In response, Applicants provisionally elect with traverse SEQ ID NO:2.

The election is made with traverse because it is submitted that the claims in Group II should not be restricted to a single amino acid sequence. There are two reasons for this. First, although the Office appears to consider the amino acid sequence disclosed in SEQ ID NOs: 2, 4, 6, 8 and 10 to have no sequence similarity, this is not the case. The amino acid sequences listed in SEQ ID NOs: 4, 6, 8 and 10 are, in fact, fragments of the amino acid sequence listed in SEQ ID NO:2. Since the sequences of SEQ ID NOs: 4, 6, 8, 10 are included within SEQ ID NO:2, it will not be an undue burden on the Office to search SEQ ID NOs: 4, 6, 8 and 10, because a search of the full length sequence (i.e., SEQ ID NO:2) and fragments thereof will be coextensive.

The second reason the claims should not be restricted to a single sequence is because restriction in this manner is contrary to the procedure set forth in MPEP 803.04. This section states that the

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Office will examine at least 10 sequences, *even if the sequences are independent and distinct*. Since the current claims only refer to 5 sequences, all five sequences should be examined together in accordance with MPEP 803.04.

So for both of these reasons, it is requested that SEQ ID NOs: 2, 4, 6, 8 and 10 be examined together

It is also noted that the Office Action indicates that the claims in Group II are related to the claims in Group III as product and process of use. Since MPEP 821.04 provides for rejoinder of method of use claims once product claims are found allowable, it is requested that the withdrawn claims of Group III be rejoined once the product claims in Group II be found allowable.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,



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